IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

D.B. CIVIL WRIT PETITION NO. 2018/2001

1. Union of India through General Manager, North Western Railway, Jaipur
2. Dy. Chief Mechanical Engineer (C&W), North Western Railway, Ajmer

.....Petitioners

Versus

1. Central Administrative Tribunal, Jaipur Bench, Jaipur
2. Gopal Krishan Sharma, S/o Shri Har Prasad Sharma, R/o 104/101, Shanti Path, Agarwal Farm, Mansarovar, Jaipur

.....Respondents

Date of Order :: 10th September, 2007

PRESENT

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. Rahul Kamwar for Mr. Gopi Chand Garg for the petitioners
Mr. P.N. Jatti for the respondent No.2

ORAL ORDER (PER R.M. LODHA,J.):

Gopal Krishan Sharma-respondent no.2 herein was implicated in a case for the offence punishable under Section 3 of Railway Property (Unlawful Possession) Act, 1966 some where in the month of September, 1993. By the order

dated 22nd September, 1993, he was suspended. The suspension order was revoked on 4th November, 1993. He retired on superannuation as Shop Superintendent (planning) on 31st December, 1993. Since he was implicated in a criminal case and that case was pending before the Court of Special Judicial Magistrate (Railways) Ajmer, provisionally the pension was sanctioned by the order dated 7th January, 1994. Despite his representation, he was denied regular pension and gratuity. That compelled him to approach the Central Administrative Tribunal. By its order dated 23rd June, 2000 the Central Administrative Tribunal granted the Original Application and directed that he be paid regular pension, gratuity and other retiral benefits. It is this order which is impugned in the present writ petition.

2. The counsel for the petitioners would urge that the Central Administrative Tribunal did not properly appreciate the provisions contained in the Railways Services (Pension) Rules, 1993, particularly Rules 9 & 10 thereof and thus, the impugned order is liable to be set-aside.

3. The counsel for the respondent no.2 did not dispute that when the order dated 23rd

January, 1999 denying him regular pension, gratuity and other retiral benefits came to be passed, the criminal case against the respondent no.2 was pending. He, however, placed before us the certified coy of the order dated 28th August, 2001 passed by the Sessions Judge (Special Judge, Scheduled Caste/Scheduled Tribe), Ajmer whereby the respondent no.2 was discharged from the criminal case. He submitted that the consideration of the matter by the Central Administrative Tribunal was proper and no interference was called for in the said order.

4. Rule 9 of the Railway Services (Pension) Rules, 1993 (for short, `Pension Rules, 1993) empowers the President to withhold or withdraw pension of the Railway Employee. It provides thus:

> "9.Right of the President to withhold or withdraw pension.-(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pension shall not be reduced below the amount rupees three hundred seventy-five per mensem.

(2) The departmental proceedings referred to in sub-rule (1),-

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the railway servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

(b) if not instituted while the railway servant was in service, whether before his retirement or during his re-employment-

(i)shall not be instituted save with the sanction of the President;

(ii)shall not be in respect of any event which took place more than four years before such institution.

(iii)shall be conducted by such authority and in such

place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the railway servant during his service.

(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 96 shall be sanctioned.

(4) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a railway servant.

(5) For the purpose of this rule,

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted,-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the magistrate takes cognizance, is made; and

(ii)in the case of civil proceedings, on the date the plaint is presented in the Court."

5. Rule 10 thereof provides for provisional pension during the pendency of departmental or judicial proceedings. The said provision reads thus:

> "10. Provisional pension where departmental or judicial proceedings may be pending.-(1) (a) In respect of a railway servant referred to in sub-rule (3) of Rule 9, the Accounts Officer shall authorise the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the railway servant or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.
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> (b) The provisional pension shall be authorised by Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.
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> (c) No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon; provided that, where departmental proceedings have been instituted under the provisions of the Railway Servants (Discipline and Appeal) Rules, 1968, for imposing any of the penalties specified in clause (i), (ii), (iii-a) and (iv) of Rule 6 of the said rules, the payment of gratuity shall be authorised to be paid to the railway servant.

> (2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such railway servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

6. The counsel for the petitioners did not dispute that the respondent no.2 has not been found guilty of any misconduct, grave or otherwise or negligence during the period of service in the departmental proceedings or judicial proceedings. He also did not dispute that no disciplinary proceedings were initiated against him for the misconduct causing pecuniary loss to the Railways during the period of his service nor after his retirement. Upon perusal of the order of the revisional court in criminal revision no. 40/2001 dated 28th August, 2001, the counsel for the petitioners did not dispute that the respondent no. 2 has been discharged from the criminal case under Section 3 of the Railway Property (Unlawful Possession) Act, 1966. He could not show us that any departmental or criminal proceeding having caused pecuniary loss to the Railways is pending against the respondent no. 2. In these circumstances the submission of

the counsel for the petitioners that the Tribunal did not properly consider Rules 9 and 10 of Pension Rules, 1993 is wholly misconceived. The facts and circumstances of the case, noticed above, do not at all justify the withholding of the pension, gratuity and other retiral benefits to which the respondent no.2 became entitled on his superannuation. The pension is not a bounty or largessee to a government employee. It is a part of the consideration for the service rendered by an employee. Such valuable right of an employee cannot be taken away unjustifiably. That gratuity is part of pension is beyond doubt. The respondent no.2 having not been found guilty of any misconduct or negligence in the departmental or judicial proceedings, during the period of service or after superannuation, thus, could not have been denied his legitimate right of getting pension, gratuity and other retiral benefits. The injustice caused to the respondent no.2 has been rectified by the Tribunal by the impugned order which does not call for any interference in extraordinary jurisdiction.

7. Writ petition is, accordingly, dismissed, with no order as to costs.

MAHESH CHANDRA SHARMA, J. R.M.LODHA,J.